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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,927	01/16/2004	David McMahon II	40,730	6541
<div>7590 07/17/2007</div> <div>Joseph G. Mitchell, Esq. 4521 Derby Lane Smyrna, GA 30082</div>				
			<div>EXAMINER</div> <div>TRAN LIEN, THUY</div>	
			<div>ART UNIT</div> <div>1761</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE</div> <div>07/17/2007</div>	<div>DELIVERY MODE</div> <div>PAPER</div>

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/758,927

Applicant(s)

MCMAHON, DAVID

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claims 17-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is vague and indefinite. Applicant's use of the term "recipe" is not understood. It is not known what category of invention applicant is claiming because a recipe is not a process, machine, manufacture or composition of matter. From the body of the claim, it appears that applicant is claiming a coating composition. Thus, it is suggested applicant use language like --- A coating composition for food product comprising or A bread-substitute coating for food product comprising---

Claim 18 is vague and indefinite because it is not known what applicant is trying to claim. A recipe is not a food product; thus, it cannot be used to coat a food product. It is suggested applicant delete the terms "recipe for" to make the claim clearer.

Claim 19 has the same problem as claim 18. Essentially, a recipe is not a product; thus, it is not known what is meant by a process of making a recipe. It is suggested applicant delete the terms "a recipe for" to make the claim clearer.

The new rejection is necessitated by amendment.

Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conforti et al in view of Kuizius and the article by Steven Pratt on "Baker Touts The Virtues of Adding Flaxseed to Bread".

Conforti et al disclose healthy bread crumbs comprising whole wheat flour, whole grain flour, any type of nuts and flavorings such as tomatoes, olive oil, spices such as

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onion, garlic, pepper, salt, paprika, cayenne etc.. (see col. 4 lines 20-28, col. 6 lines 1-5)

Conforti et al do not disclose the nut is almond meal, the inclusion of flax seed meal and soy flour.

The article by Steven Pratt teaches flax seed flour is used to make bread and shows that flax is rich in omega-e fatty acids which give health benefits.

Kurzies teaches preparing yeast raised baked product in which soy flour and flax seed can be added (see abstract)

Since Conforti et al teach using any type of nuts, it would have been obvious to one skilled in the art to use almond nut if such flavor is wanted; this would have been an obvious matter of choice. Conforti et al objective is to make healthy bread crumbs and teach whole grain flours are used. Thus, it would have been obvious to one skilled in the art to use flax seed flour and soy flour to obtain the health benefits provided by these two ingredients and the use of such flours to make bread is known in the art as shown by Pratt and Kurzies. It would have been obvious to mix the ingredients in the process of making the product.

In the response filed 5/7/07, applicant generally argues that the claimed invention is unobvious but does not specifically present a persuasive reason. With respect to the article, applicant argues it never mentions " flax seed flour". The article discusses the health benefits of flaxseed such as the amount of omega 3 fatty acids and fiber. The article teaches the use of flax flour in baking. The flax flour comes from the flax seed, just the same as wheat flour is made from wheat grain. There is no recitation of the

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particle size of the flax seed meal in the claims; thus, flax seed flour is the same as flax seed meal. Applicant further argues the article does not teach the use of almond meal or soy meal or seasoning. The article is not relied upon for the teaching of almond meal and soy meal. Applicant makes the same argument with respect to the Kurzius reference. Kurzius is used to show that the combination of soy flour and flax seeds are known in making bread product. Bread crumbs as disclosed by Conforti et al are made from bread product. Conforti's objective is to make a healthy bread crumbs; thus, it would have been obvious to one skilled in the art to add ingredients known to be used in bread product with health benefits as shown by Kurzius and the article to further enhance the objective of Conforti. Applicant argues none of the reference teaches almond meal, dehydrated garlic, dehydrated onions and pepper. Conforti et al teach the use of crushed almonds which mean that whole almonds are not used. Crushed almonds encompasses almonds meal; it would have been obvious to use almond meal if one wants a fine texture instead of a coarse texture in the bread crumb. Conforti teaches the use of garlic, chili and onion. It would have been obvious to one skilled in the art that these ingredients have be dried or dehydrated because bread crumbs are dried product. Chilli and cayenne are equivalent to red pepper.

Applicant's arguments filed 5/7/07 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hendricks Keith can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

July 13, 2007


LIEN TRAN
PRIMARY EXAMINER
Group 17 00